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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Federal Communications Commission  
Office of Secretary

In the Matter of

800 Data Base Access Tariffs and  
the 800 Service Management System  
Tariff and

Provision of 800 Services

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CC Docket No. 93-129

CC Docket No. 86-10

**OPPOSITION OF SOUTHWESTERN BELL TELEPHONE COMPANY  
TO PETITIONS FOR RECONSIDERATION OF AT&T AND MCI**

Southwestern Bell Telephone Company (SWBT) files this Opposition to the Petitions for Reconsideration (PFRs) of AT&T and MCI, both of whom request the Commission to order SWBT to make a one time Price Cap Index (PCI) adjustment reflecting the full amount of allegedly excess exogenous costs included in SWBT's PCIs during the period in which SWBT's 800 Data Base tariff was subject to the Commission's Accounting Order. AT&T and MCI completely ignore four important facts that are damning to the request they make in their PFRs:

1. The Commission has broad discretion not to require refunds when accounting orders are instituted.
2. The petitions fail to account for the fact that price cap index reductions do not automatically translate into price reductions and therefore do not necessarily require revenue reductions.
3. The petitions fail to account for the monies that have already been returned to AT&T, MCI and other access customers in the form of price cap sharing dollars.
4. The petitions fail to recognize that the pricing flexibility within the Commission's price cap rules allows carriers to meet revenue objectives and other financial goals through

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alternative marketing and pricing means that could have left the total access costs to AT&T, MCI and others unchanged.

Each of these facts are explained further below.

I. THE COMMISSION HAS BROAD DISCRETION, WHEN ACCOUNTING ORDERS ARE INSTITUTED, IN DECIDING WHETHER OR NOT TO REQUIRE REFUNDS.

Recently, the Commission chose not to require a refund from Bell Atlantic, even though Bell Atlantic had overearned for the reporting period in question. In so ruling, the Commission stated: "Section 204 of the Act allows the Commission considerable discretion regarding whether to order rate refunds from carriers."<sup>1</sup> The Commission chose not to order a refund from Bell Atlantic because of certain mitigating factors not relevant to this case. But the decision not to require a refund was well within the Commission's discretion.

In the present case, the Commission has chosen to require PCI adjustments on a prospective basis only. This decision was no doubt influenced by the extremely lengthy period (over three years) which transpired from the filing of SWBT's Direct Case to the entry of the Commission's Order.

Had the Order been issued sooner, SWBT could have made different business decisions which would have left total access costs to petitioners unchanged.

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<sup>1</sup> In the Matter of Local Exchange Carrier Access Tariff Rates Levels: Bell Atlantic Telephone Companies Tariff F.C.C. No. 1; GVNW, Inc./Management Bourbeuse Telephone Company Tariff F.C.C. No. 1; Memorandum Opinion and Order; FCC 93-399 (released August 27, 1993).

## II. PETITIONERS FAIL TO ACCOUNT FOR PRICING BELOW CAP.

The Commission's rules specify that rate reductions are not required due to exogenous reductions to price cap indexes (PCIs) if the carrier is already pricing its services sufficiently below the relevant price cap constraints. Part 61.45 of the Commission's Rules specifies that certain adjustments be made to the price cap indexes (PCIs). These adjustments include an inflation factor, a productivity factor and exogenous adjustments as required or allowed. Parts 61.46, 61.47 and 61.48 then describe the adjustments to other price cap constraints and actual prices that may be required when a PCI is reduced.

SWBT priced its traffic sensitive and trunking services below their relevant PCIs in each of the years 1993, 1994 1995 and 1996. Due to this fact, any new Commission ruling that its 800 Data Base disallowed exogenous amount now be imposed retroactively to May 1, 1993 must take into account that the exogenous reductions in those years would not require dollar-for-dollar price reductions due to pricing below cap. To the extent that SWBT would have been required to make any price reductions, the amounts of the price reductions would have been offset by SWBT's ability to leave prices unchanged when pricing below cap. The SWBT amounts of below cap pricing are displayed in Attachment 1 herein and are highlighted in the table below.

**Southwestern Bell Tel. Co. -- Pricing Below Cap  
(\$ 000's)**

	<b>Traffic Sensitive Basket</b>	<b>Trunking Basket</b>
<b>1993*</b>	<b>128.3</b>	<b>383.1</b>
<b>1994</b>	<b>231.4</b>	<b>4,766.0</b>
<b>1995</b>	<b>582.1</b>	<b>5,485.9</b>
<b>1996</b>	<b>357.4</b>	<b>5,976.2</b>
<b>Total</b>	<b>1,299.2</b>	<b>16,611.2</b>

\* May 1, 1993 through December 31, 1993

The essence of this point is that the Commission should not require, and could not sustain a requirement, that the LECs give back any monies that strict enforcement of the price cap rules would not have required (due to pricing below cap) had the lower amounts contained in the recent 800 Data Base Order always been applied.

**III. PETITIONERS FAIL TO ACCOUNT FOR MONIES ALREADY RETURNED TO CUSTOMERS.**

AT&T and MCI fail to recognize that their request must be offset by the sharing monies that have already been returned to themselves and other access customers. SWBT was in 50/50 sharing

in each of the years 1993, 1994 and 1995.<sup>2</sup> Due to this fact, any price reduction triggered by an exogenous reduction would have to be reduced by 50% for the sharing benefits already provided to AT&T, MCI and others. In other words, had the Commission required SWBT to reduce its revenues in 1993, 1994 or 1995 by certain amounts, earnings would have been lower and sharing would have been less, offsetting by 50% the revenue reduction benefits now requested by AT&T and MCI.

A calculation of the necessary corrections to the revenue benefit amounts requested by AT&T and MCI is contained in Attachment 2 herein. The net result of including both below-cap pricing and sharing is that, even if the Commission concludes that retroactive application of the Commission's exogenous decision is lawful, the \$3.5 million amounts requested by the petitioners must be reduced to \$287 thousand.<sup>3</sup> The pricing below cap amounts utilized in SWBT Attachment 1 and 2 are contained in the public record in SWBT's tariff transmittals. SWBT has explained and justified each of the calculations contained in Attachments 1 and 2, but would be willing to answer any questions as needed.

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<sup>2</sup> With an effective date of July 2, 1995, SWBT elected the 5.3% productivity factor / no-sharing option. SWBT calculations presented herein reflect this fact and contain an offset for sharing benefits already provided only for the first portion of 1995. No sharing offsets were computed here for 1996, as SWBT elected the 5.3% productivity factor / no-sharing option for both halves of 1996.

<sup>3</sup> The \$287 thousand amount includes interest computed at 11.25%. See Attachment 2.

IV. PETITIONERS FAIL TO RECOGNIZE THAT, USING THE ALLOWED PRICING FLEXIBILITY, SWBT COULD HAVE RAISED THE REVENUES PAID BY PETITIONERS THROUGH OTHER MEANS.

The petitions of AT&T and MCI should be denied because retroactive and selective application of an exogenous reduction provides SWBT with no opportunity to achieve its marketing and financial objectives using the limited pricing flexibility inherent in the Commission's price cap plan for LECs. If the Commission had required the 800 Data Base exogenous reductions now requested by AT&T and MCI in a timely fashion, SWBT would have been able to make management decisions to raise additional revenue to offset the resulting revenue loss. For example, in 1993, SWBT was priced sufficiently below its price cap index in the Special Access Basket to absorb the full amount of an 800 Data Base exogenous reduction, if the Commission had so ordered in 1993. Subsequently, in 1994 and 1995, SWBT was priced below cap in the Trunking Basket by approximately \$5 million each year, more than enough to fully offset the 800 Data Base exogenous reduction, if the Commission had so ordered in 1994 or 1995.

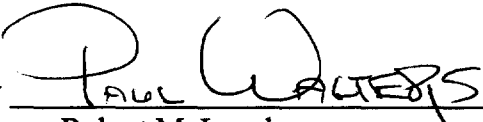
For the Commission to now require revenue reductions without allowing SWBT to utilize other price cap rules and limited flexibilities and to reconsider SWBT's financial and marketing objectives would be an arbitrary and capricious application of a selected set of the Commission's rules. The Commission should not grant the petitioners' requests that the Commission give retroactive application to a selected rule without regard to the accompanying rules which provide SWBT with the limited flexibility to mitigate such financial harm.

V. CONCLUSION

For the reasons discussed above, the Commission should deny the PFRs of AT&T and MCI.

Respectfully submitted,

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**Attachment 1****SWB BELOW CAP PRICING**

**May 1, 1993 through December 31, 1996**  
**(\$000's)**

<b>Effective Dates</b>	<b>Annualized</b>		<b>Revenue Foregone</b>	
	<b>Traffic Sensitive</b>	<b>Trunking</b>	<b>Traffic Sensitive</b>	<b>Trunking</b>
5/1/93 - 7/1/93	\$ 322	\$ 1,262	\$ 53.7	\$ 210.3
7/2/93 - 8/29/93	0	0	0	0
8/30/93 - 10/15/93	44	431	5.5	53.9
10/16/93 - 2/27/94	323	556	121.1	208.5
2/28/94 - 6/30/94	13	1,873	4.7	680.4
7/1/94 - 10/15/94	21	7,561	6.1	2,205.3
10/16/94 - 1/14/95	797	8,465	199.3	2,116.3
1/15/95 - 1/31/95	926	8,919	35.4	341.1
2/1/95 - 6/21/95	926	9,388	363.0	3,679.8
6/22/95 - 7/31/95	927	9,702	97.5	1,020.3
8/1/95 - 9/20/95	26	62	4.0	9.5
9/21/95 - 1/29/96	187	398	66.1	140.8
1/30/96 - 6/30/96	187	2,384	77.9	993.3
7/1/96 - 9/12/96	546	10,075	109.6	2,022.7
9/13/96 - 11/13/96	575	10,138	95.8	1,689.7
11/14/96 - 12/30/96 (est.)	471	9,710	58.9	1,213.8
12/31/96	231	9,304	.6	25.5
<b>Total Price Cap Revenue Foregone *</b>			<b>\$ 1,299.2</b>	<b>\$16,611.2</b>
<b>* 1993 Revenue Foregone</b>			<b>\$ 128.3</b>	<b>\$ 383.1</b>
<b>1994 Revenue Foregone</b>			<b>\$ 231.4</b>	<b>\$ 4,766.0</b>
<b>1995 Revenue Foregone</b>			<b>\$ 582.1</b>	<b>\$ 5,485.9</b>
<b>1996 Revenue Foregone</b>			<b>\$ 357.4</b>	<b>\$ 5,976.2</b>



**Correct Calculation of Revenue Reductions That Could be Required  
If Retroactive Implementation of 800 DB Exogenous is Deemed Appropriate**

(\$ 000s)

		<u>Total</u>	<u>Traffic Sensitive Basket</u>	<u>Trunking Basket</u>
Petitioners' Requested Exogenous Amounts <sup>a</sup>	1993	459.0	459.0	---
	1994 <sup>b</sup>	786.8	365.1	421.7
	1995	786.8	365.1	421.7
	1996	786.8	365.1	421.7
SWBT Actual Pricing Below Cap <sup>c</sup>	1993		128.3	not applicable
	1994		231.4	4,766.0
	1995		582.1	5,484.9
	1996		357.4	5,976.2
Gross Revenue Reductions	1993		330.7	0
	1994		133.7	0
	1995		0 0	
	1996		7.70	
Sharing Benefits Already Provided	1993		165.4	---
	1994		66.9	---
	1995 <sup>d</sup>		-----	
	1996		0 ---	
Net Revenue Reduction Before Interest	1993		165.4	---
	1994		66.9	---
	1995		---	
	1996		7.7--	
Net Revenue Reduction Plus Interest @ 11.25%	1993		204.6	0
	1994		74.4	0
	1995		--- 0	
	1996		7.70	
	<b>Total</b>		<b>286.7</b>	<b>0</b>

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<sup>a</sup> The before-interest exogenous amount for SWBT requested by AT&T and MCI on a retroactive basis is the same annual amount (\$786.8K) that the Commission ordered prospectively.

<sup>b</sup> Local Transport Restructure allocated 53.6% of TS Basket to the new Trunking Basket.

<sup>c</sup> Amounts shown here detailed in Attachment 1 above and taken from SWBT's filings.

<sup>d</sup> SWBT elected the 5.3% productivity offset / no-sharing option for the latter portion of 1995 and all of 1996.

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Opposition of Southwestern Bell Telephone Company to Petition for Reconsideration of AT&T and MCI" in Docket No. 93-129; 86-10 has been filed this 11th day of December, 1996 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above a horizontal line.

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